

*Department of Planning, Building and Code Enforcement*

STEPHEN M. HAASE, AICP, DIRECTOR

November 9, 2004

Mr. Troy Fujimoto, Project Planner
City of Milpitas, Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

SUBJECT: Draft Environmental Impact Report for Elmwood Residential/Commercial Development Project (File No. OA04-10-021)

Dear Mr. Fujimoto:

The City of San Jose (CSJ) appreciates the opportunity to review and comment on the Draft Environmental Impact Report (EIR) for the proposed Elmwood Residential and Commercial Development Project located on both sides of South Abel Street, north of the Elmwood Correctional Facility in the City of Milpitas. The project proposes to develop up to 683 new residential units on 29 acres. The proposal also includes a request to change the land use designation of 20 acres located on the west side of South Abel Street from *General Commercial* and *Parks and Open Space* to *High Density Residential*. Also included is a request to build three auto dealerships on 23 acres located along the eastern edge of I-880; north of Great Mall Parkway.

The CSJ has reviewed the Draft EIR for the project, and has the following comments. Specific questions regarding these comments may be directed to Geoff Blair, City of San Jose Environmental Services Department at (408) 382-8842.

San Jose/Santa Clara Water Pollution Control Plant (Plant) - Plant Odors

The subject property is about 1.5 miles southeast of the Plant. The Plant can be a potential source of odors. We recommend that due to the proximity to the Plant, its impact and mitigation measures be discussed and analyzed in the DEIR. Questions about potential odors can be addressed to Plant staff at (408) 945-5300.

Plant Hazardous Materials

The subject property lies within the Plant's emergency planning zone based on a computer model, worst-case release scenario of hazardous materials used at the Plant. The DEIR does not address this potential issue. Discussion of model results and other issues related to safety and chemical releases at the Plant can be found in the Plant's Risk Management Plan (RMP). Questions about possible releases and the RMP can also be addressed to Plant staff at (408) 945-5300.

Troy Fujimoto

RE: Draft EIR for Elmwood Project (File No. OA04-10-021)

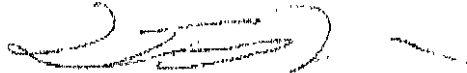
November 9, 2004

Page 2 of 2

The CSJ looks forward to reviewing the Final EIR when it becomes available for review.. Please provide CSJ with a copy of the complete Final EIR, including all technical reports. Please send them to my attention.

Thank you again for the opportunity to review and comment on the Draft EIR for this project. If you need to contact me, you may reach me at (408) 277-4576.

Sincerely,



Janis Moore
Planner II

JAM:jam

C: Geoffrey Blair

OA04-10-021 DEIR Milpitas Elmwood Pjct Ltr.doc/JAM

October 29, 2004

City of Milpitas Planning Division
Attn: Troy Fujimoto
455 East Calaveras Blvd.
Milpitas CA 95035

Dear Mr. Fujimoto:

Re: Elmwood Residential and Commercial Development Project

It was a pleasure to meet you at the KB Homes project presentation meeting earlier this month. Many members of the Sylvan Gardens neighborhood association are looking forward to seeing improvements on the undeveloped property along Abel Street, myself included. We are especially delighted to note that KB Homes will be including a small park in the proposed development, something our area has been sorely lacking.

There are, however, a few areas of concern regarding this project which I would like to bring to your attention. These concerns have been the subject of much discussion among the community members in the Sylvan Gardens area, and were addressed at our neighborhood meeting on October 15, 2004. With the addition of nearly 700 new housing units to this very small area, we are greatly concerned regarding the following:

Size of the proposed park area:

We understand that the 6 acres of proposed public park and trails meets the minimum city requirements for a development of this size, however we would ask the city to remember that the entire Sylvan Garden area has no city park. This means the new proposed park area will be utilized not just by the new development, but by the population of Sylvia Avenue, Corning, Palmer, Ethel and the Junipero area as well. It is also evident that the "park" is the long, narrow linear stretch of land over the Hetch Hetchy right-of-way. The very layout of this park as proposed is not family-friendly, and does not make itself useful as an area for gatherings of any size. A large family party, as is very common in other neighborhood parks, would not be feasible for such a layout, as the grass and picnic area are nowhere near the "Tot Lot", with several paved athletic courts in between. We would implore you to consider expanding the park area to at least twice the proposed area in order to make it a family-friendly, usable facility. Perhaps it would even be possible to allot one of the three proposed auto centers as a park facility, with the added advantage of keeping the bright lights and loudspeakers inherent to auto dealers a more appropriate distance from the existing neighborhood.

Increase in traffic to the immediate area:

According to CMP guidelines and LOS criteria in the Project EIR, there are eight intersections that will be operating at unacceptable levels of service for one or both peak hours when this project is complete. Even with proposed mitigation measures, the Midtown Specific Plan EIR found that the impacts on five intersections would be "significant and unavoidable" (80). At the current time it already takes an incredibly inconvenient amount of time to reach Calaveras Boulevard from Sylvia Avenue during peak hours. Drivers must sit through countless light cycles simply to turn right onto Calaveras Boulevard, an action allowed only on the green light.

The additional impact of some 6,000 car-trips per day (EIR 79) due to the new project development puts too many intersections into the "unacceptable" category by LOS standards. We ask you to consider the impact of putting so many housing units into such a small area.

Impact on community resources – Fire, Police, Schools:

According to the EIR, the additional elementary school students generated from the proposed development would attend Zanker Elementary School, a school which this same report states is already near capacity (202).

Additionally, according to the EIR, "the Project design constraints will produce narrower street widths and tighter turning radii, which are incompatible with performance specifications of the Fire Department's current ladder truck and engines resulting in a significant impact" (201). This creates a hazardous condition and possible city liability where city emergency vehicles would be unable to navigate entire neighborhoods.

We would again ask you to consider the impact of packing dwelling units in so tightly that our schools become impacted and our fire trucks are unable to navigate the streets corners to serve this new population.

May I close by reiterating that we welcome KB Homes and are pleased to see the undeveloped areas on Abel being put to use. We would simply ask that you reconsider how many units should be allowed in such a small area, and how greatly this project will impact both current and future community members. The Reduced Residential Density Alternative proposed in the EIR seems an ideal alternative, and we ask that you give it serious deliberation.

Thank you for your kind consideration in this matter.

Sincerely,

Ginger Thompson

File: 25919
Lower Penitencia
Creek

November 4, 2004

Mr. Troy Fujimoto
Planning Division
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Subject: Draft Environmental Impact Report (EIR) for the Elmwood Residential and Commercial Development Project – Sch No. 2003112102

Dear Mr. Fujimoto:

The Santa Clara Valley Water District (District) has reviewed the subject document, received on October 5, 2004, and has the following comments:

The Draft EIR should address changes in the floodplain located south of Tasman Drive due to the construction of the lightrail along Tasman Drive and soundwall located southerly Tasman Drive. It is the understanding of the District that construction of the roadway improvement for Tasman Drive affected the existing flood plain but the impacts are not reflected on the current Federal Insurance Rate Map (FIRM). Therefore, the current FIRM may not adequately show flood conditions on the Elmwood site. The Draft EIR for the proposed project should acknowledge this existing condition.

As a reminder, please submit the mitigation and monitoring plan and final flood plain study prior to your approval of the improvement plans.

For sites greater than one acre, the developer must file a Notice of Intent to comply with the State's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity with the State Water Resources Control Board.

District records show four wells on the site. In accordance with the District Ordinance 90-1, the owner should show any existing well(s) on the plans. The well(s) should be properly maintained or destroyed in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells.

Please submit two sets of improvement plans when available for our review and issuance of a permit. The submittal shall include grading and drainage, fencing, landscape and irrigation plans.

Please reference File No.25919 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494 or email me at THipol@valleywater.org.

Sincerely,

Theodore Hipol
Assistant Engineer
Community Projects Review Unit

cc: S. Tippets, S. Yung, T. Hipol, M. Klemencic, B. Smith, S. Katric, S. Rose, G. Fowler, S. Wrightson, D. Duran, File (2)

TH:

County of Santa Clara

Roads and Airports Department
Land Development and Permits

101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2460 FAX (408) 441-0275



October 18, 2004

✓ Mr. Troy Fujimoto
Planning Division
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Subject: Draft Environmental Impact Report (EIR) - Elmwood Development Project
Montague Expressway

Dear Mr. Fujimoto:

Your September 30, 2004 letter along with the subject Draft EIR has been reviewed. Our comments are as follows:

On Page 4 under Summary and Impacts of Mitigation Measures, it is stated in TR-4 that the developer shall pay to the City a "fair share" of the cost of widening Montague Expressway.

Currently, the City and County are working together towards the widening of Montague Expressway between Great Mall Parkway and SR 680. We look forward to similar co-operation towards the remaining portions of Montague Expressway widening on the basis of City's collection of "fair share" contributions from other projects.

Please call me at 408-573-2465 if you have any questions.

We thank you for the opportunity to review this matter.

Sincerely,

Ashok Vyas

cc: Mike McNeely, City Engineer, City of Milpitas
DEC, MFG, MA, TH, WRL, file



Pacific Gas and Electric Company

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

November 10, 2004

City of Milpitas
455 E. Calaveras Bl.
Milpitas, CA 95035
Attn: Troy Fujimoto
Fax #: 408-586-3293



RE: Review of Draft Environmental Impact Report (EIR)
Elmwood Residential and Commercial Development Project
Both sides of Abel Street, n/o Elmwood Correctional facility, Milpitas
Report dated : 9/27/2004
SCH: 2003112102
PG&E file: 40322924-y04-MR-170

Dear Sir / Madam,

Thank you for the opportunity to review the Draft Environmental Impact Report, for the above project. PG&E has the following comments to offer:

PG&E owns and operates gas and electric facilities which are located within and adjacent to the proposed project. To promote the safe and reliable maintenance and operation of utility facilities, the California Public Utilities Commission (CPUC) has mandated specific clearance requirements between utility facilities and surrounding objects or construction activities. To ensure compliance with these standards, project proponents should coordinate with PG&E early in the development of their project plans. Any proposed development plans should provide for unrestricted utility access and prevent easement encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities.

The developers will be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate their proposed development. Because facilities relocation's require long lead times and are not always feasible, the developers should be encouraged to consult with PG&E as early in their planning stages as possible.



Pacific Gas and Electric Company

111 Amador Boulevard
P.O. Box 15005
San Jose, CA 95115-0005



Relocations of PG&E's electric transmission and substation facilities (50,000 volts and above) could also require formal approval from the California Public Utilities Commission. If required, this approval process could take up to two years to complete. Proponents with development plans which could affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules.

We would also like to note that continued development consistent with City's General Plans will have a cumulative impact on PG&E's gas and electric systems and may require on-site and off-site additions and improvements to the facilities which supply these services. Because utility facilities are operated as an integrated system, the presence of an existing gas or electric transmission or distribution facility does not necessarily mean the facility has capacity to connect new loads.

Expansion of distribution and transmission lines and related facilities is a necessary consequence of growth and development. In addition to adding new distribution feeders, the range of electric system improvements needed to accommodate growth may include upgrading existing substation and transmission line equipment, expanding existing substations to their ultimate buildout capacity, and building new substations and interconnecting transmission lines. Comparable upgrades or additions needed to accommodate additional load on the gas system could include facilities such as regulator stations, odorizer stations, valve lots, distribution and transmission lines.

We would like to recommend that environmental documents for proposed development projects include adequate evaluation of cumulative impacts to utility systems, the utility facilities needed to serve those developments and any potential environmental issues associated with extending utility service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays to the project schedule.

We also encourage the Planning Office of the City to include information about the issue of electric and magnetic fields (EMF) in environmental documents. It is PG&E's policy to share information and educate people about the issue of EMF.

Electric and Magnetic Fields (EMF) exist wherever there is electricity--in appliances, homes, schools and offices, and in power lines. There is no scientific consensus on the actual health effects of EMF exposure, but it is an issue of public concern. If you have questions about EMF, please call your local PG&E office. A package of information which includes materials from the California Department of Health Services and other groups will be sent to you upon your request.



Pacific Gas and Electric Company

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

PG&E remains committed to working with City to provide timely, reliable and cost effective gas and electric service to the planned area. We would also appreciate being copied on future correspondence regarding this subject as this project develops.



The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

Should you require any additional information or have any questions, please call me at (408) 282-7401.

Sincerely,

Alfred Poon
Land Agent
South Coast Area, San Jose

MEMORANDUM

Department of Planning & Neighborhood Services



To: Planning Commission
From: Troy Fujimoto, Acting Associate Planner
Subject: **Project Description of the Draft EIR**
Date: November 10, 2004

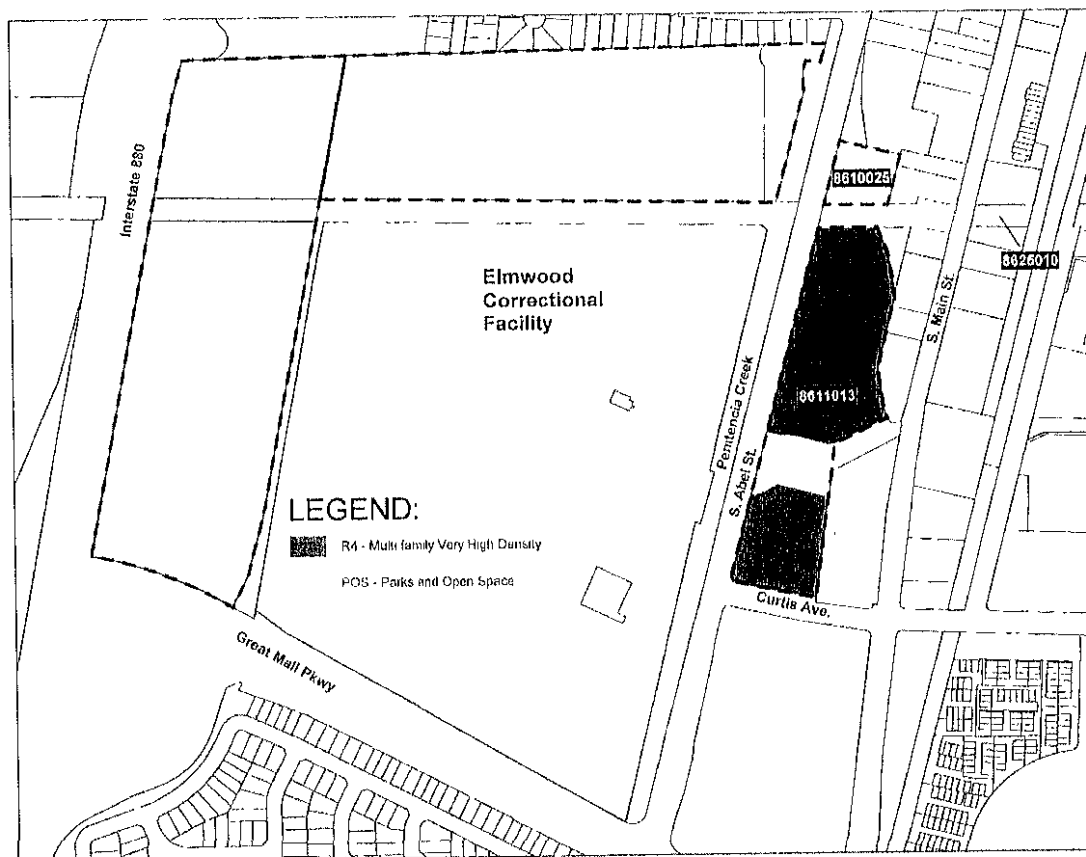
Attached is additional information for the Project Description of the Draft EIR for the Elmwood Residential and Commercial Development Project. The City proposed the addition of the Cracolice building site into the proposed land use changes because the proposed POS designation will more accurately reflect the use of the site. The other modifications were the inclusion of 0.4 acres of Hetch-Hetchy right-of-way as part of the project's park improvements and the increase in the POS zoning necessary for the elms park. These modifications are minor and do not result in any necessary changes to the Draft EIR.

ATTACHMENT C

Additional Information for the Project Description of the Draft EIR for the Elmwood Residential and Commercial Development Project.

Parcel 086-10-025 is included with the General and Specific Plan Amendment from Mixed Use to Parks/Recreation and Zone Change from Mixed Use to Parks and Open Space; portions of Parcel 086-11-013 from Multi-Family Very High Density and Parks/Recreation to Parks/Recreation and Multi-Family Very High Density and Zone Change from Multi-Family Very High Density and Parks and Open Space to Parks and Open Space and Multi-Family Very High Density; and a portion of Parcel 086-05-003 from Parks and Recreation to General Commercial.

In addition, the project includes an increase in public park space to approximately 7 acres with the inclusion of parcel 086-25-010 as part of the project. This parcel is currently vacant and part of the Hetch-Hetchy right-of-way. The location of the parcels are shown on the map below.



Per Section 15088.5 (subsection 5) of the State CEQA guidelines, this is not considered significant new information, thus, will not require re-circulation of the EIR as noted below.

1. Parcel 086-10-025. The general and specific plan amendment (GPA and SPA) and rezone will include parcel 086-10-025. Parcel 086-10-025 is approximately 1 acre and is currently being used as the temporary senior center. Other than the general plan amendment and zone change, no physical or environmental changes are proposed.
2. The GPA, SPA, and rezone on the above parcel will not have any significant impacts.
 - a. The project will not have any aesthetic impacts as the land use change will not include any physical changes to the site.
 - b. The site is currently developed with two buildings, a parking lot and landscaping, thus, there will not be any biological or agricultural impacts.
 - c. The land use change will not have any hazard and hazardous material impacts as the site currently has none, and the land use change will not introduce new hazardous materials.
 - d. Because no physical modifications are proposed, there will not be any construction or land disturbances associated with the land use change, thus, there will not be any mineral resource, cultural resource, hydrology and water quality, noise, geology/soil impacts.
 - e. The land use change from mixed use to parks/recreation will require maintenance of the site, however, because it is already the site of the senior center there is already ongoing maintenance, thus it will not have an impact.
 - f. The land use change is from mixed use to parks/recreation. Because it is changing into a less intensive use (development potential minimized) it will not require or have an impact on existing public services, noise, traffic, air quality and population and housing.
 - g. The land use change will not physically separate a neighborhood, the new land use is the same as an adjacent parcel of land, thus, it will not be a spot zone or result in any incompatibility issues.
 - h. There will be no long term or cumulative impacts, as any future development will require its own environmental analysis, which will address any impacts associated with the future project.
3. Parcels 086-11-013 and 086-05-003. The general and specific plan amendment (GPA and SPA) and rezone will include parcels 086-11-013 and 086-05-003. Both parcels are currently vacant and include approximately 1.6 acres. The changes to the sites were covered in the EIR, however, identification of these two parcels were omitted from the project description.
4. The GPA, SPA, and rezone on the above two parcels will not have any new impacts than were already identified in the Draft EIR as these two parcels were considered part of the project description, however, the project description did not

identify a GPA, SPA and rezone on these parcels even though the project was designed under this premise.

5. Parcel 086-25-010. This parcel is approximately 0.4 acres and is currently vacant. Because of minimal increase in park area and because the park use is no more intensive than the current vacant use, there is no significant impact associated with the additional park land.
6. The above increase in public park area will not have any significant impacts.
 - a. The project will not have any aesthetic impacts as the new park area will not have any large structures on the site.
 - b. The site is currently undeveloped but has been maintained throughout the years for weed control, thus, there will not be any biological or agricultural impacts.
 - c. The increase in park space will not have any hazard and hazardous material impacts as the site currently has none, and the increase in park area will not introduce new hazardous materials.
 - d. The additional 0.4 acres is not a substantial change to the development area and will not substantially increase the Project air quality impacts. No changes is required to the Project air quality mitigation.
 - e. The site contains two large underground pipes and has already been disturbed. Thus, there will not be any mineral resource, cultural resource, and geology/soil impacts.
 - f. The improvements on the site will not increase surface water runoff, as it will not create large amounts of impervious area, and will not require large amounts of grading of land, thus, there are no hydrology and water quality impacts.
 - g. Because of the minimal amount of land area less than .4 acres involved and the use of passive activities on the site, it will not require much maintenance, thus, there will not be any significant impacts.
 - h. Because the land use is not changing from its current park designation, it will not have an impact on existing public services, noise, traffic, air quality and population and housing.
 - i. The additional park area will not physically separate a neighborhood as it has always been identified as park space.
 - j. There will be no long term or cumulative impacts, as the space has always been identified as park space and the uses on the site (passive) is not anything that is above and beyond what was originally envisioned for the site.

October, 2004 PRCRC meeting minutes

M/S McGuire/Serena
All Ayes
Absent (3) Gill, Ku and Leonard

One (1) Organizational Youth Sports Assistance Fund Application was received from Southpawprep, requesting \$980 to offset the cost of purchasing video equipment to tape player and team skills, practices and games

This applicant meets the eligibility for the grant process. Staff has reviewed the items requested and has found that the requested items meet the application guidelines, under the section, "Funding consideration will be given", page 2, and item #3 states; "To one time activities or capital equipment purchases designed to address a need or problem which organization cannot routinely finance".

Ralph Fields was in attendance at the meeting to answer any questions of the commission. In attendance with him were also a couple of his players who helped write the grant.

MOTION to recommend to City Council funding Southpawprep \$980 to offset the cost of purchasing video equipment to tape player and team skills, practices and games.

M/S McGuire/Serena
Ayes: (5) Krommenhock, McGuire, Munzel, Serena and Tuason
Absent: (3) Gill, Ku and Leonard
Abstain: (1) Gray

2. Proposed Park Areas related to the Elmwood Residential Development. (Troy Fujimoto, Acting Associate Planner)

KB Home is proposing to improve 4± acres of the Hetch Hetchy right-of-way and create approximately 6.65 acres of new public park area with their development proposal to construct 683 homes on approximately 29 acres along both sides of South Abel St. The applicant is currently in lease negotiations with the San Francisco Public Utilities Commission staff and is seeking preliminary feedback from the PRCRC on the level and type of park improvements being proposed on the Hetch-Hetchy right-of-way and on the west of South Abel Street. Details of the proposed new park around the O'Toole Elms and a concept for a historic interpretive display will be presented at the PRCRC's November meeting.

Blair King, Assistant City Manager said that the parks element of this development would be presented to the PRCRC. One part will be this evening for input and the 2nd part will be at the November meeting and then it will go on for approval.

In 2002 the City of Milpitas discussed with the county the amendment of the Redevelopment plan. Milpitas would buy land and develop it. Six and a half acres would meet our standards and the municipal code.

In June of 2003 the City Council agreed to an idea in concept. Since then KB, the county and the City have been working together. The area also includes land owned by San Francisco Water, which limits what can be put on the land.

Troy Fujimoto, Acting Associate Planner, introduced the applicant team to the Commission. The applicant team would like to get ideas of the amenities from the Commission. The space will include 14 acres of public and private open

space. The Hetch-Hetchy area will include a trail with benches and tables, two half-court basketball courts, barbeque areas, two tennis courts, open lawn, sand volleyball court and horseshoe pits. The area closer to Abel will include a tot lot, drinking fountains and benches. The whole area will also be enclosed by an 18 foot wall.

Commissioner McGuire stated that if a pipe broke under the park area, the city would have to replace whatever was destroyed. Mr. Fujimoto responded that was correct, therefore, items have been picked that are not of great cost to replace.

There will be parking available in one lot and on the street. Council Member Polanski stated that this was adequate parking since this a "gated community" and people will be able to walk to the park.

Commissioner Krommenhoek asked if there was going to be any public restrooms. Mr. Fujimoto stated that there are not going to be any public restrooms located at the parks. Commissioners had a concern and felt that there is a real need for restrooms. There was also a concern that neighboring homeowners will be bothered by people utilizing the parks that will want to use their restrooms in their homes. People urinating in the bushes at the park, was also a concern of the Commissioners. The Commissioners want to make a recommendation to the City and also to the developer to include public restrooms at the park.

Chairperson Munzel questioned the placing of picnic tables in the middle of the grass area without any shade. The development team responded that they cannot place trees there because of the pipeline, but some of the picnic tables do have shade structures.

Commissioner McGuire inquired where the children living in this development would go to elementary school. Mr. Lindsay responded that they would attend Pearl Zanker Elementary School.

Thus far, the suggestions of the Commissioners are to have public restrooms and more shade structures for the picnic tables.

XII. Staff Reports

- Blair King reported that benches are being added to several parks and details are included in the 2004 Parks Log.

XIII. Liaison Reports

1. City Council

Council Member Polanski reported the following:

- The City Newsletter has been mailed out to all citizens and included in it is an "Ethics First" pamphlet.
- The City Council approved the "City Council Handbook" which includes its policies and procedures. It is available to view on the City's website.
- She attended the League of California Cities Conference. It included an ethics panel on adopting a values based code of ethics. She is proud of the of the Ethics Code that the City of Milpitas has developed and the City has been receiving calls from all over the US about our code.
- The conceptual design of the Milpitas Sports Center has been approved.

November 2004

PRCRC minutes

Commissioner Tuason commented that the gravel rocks along the trail at Gill Park are too large. He has noticed people using the street instead.

Commissioner McGuire announced that Spangler elementary held their clean up day and approximately 200-300 volunteers assisted.

IX. New Business

1. **Proposed Elm Park area related to the Elmwood Residential Development. (Troy Fujimoto, Acting Associate Planner)**

At the November PRCRC meeting, KB Home presented a portion of the parks related to the proposed 683 unit Elmwood residential development. The applicant has returned to the Commission to receive preliminary feedback on the level and type of park improvements being proposed in the park area around the Elm tree grove located to the east of South Abel St. Park amenities include play equipment, including swings and tot-lot, trails through the area and a historic interpretive display.

Blair King, Assistant City Manager, reported that the Elms are a historical element of the area. Studies of the Elms have been completed and recommend removing the Elms. There will be a historical interpretive display explaining the importance of the Elm trees.

Mr. King explained that new trees may be propagated from the seeds of the current elms or from the scion wood collected from the grove.

Chairperson Munzel explained that these trees are a part of our history. Commissioner Krommenhock added that maybe the trees have reached the end of their lives. Chairperson Munzel suggested some of the wood should be salvaged from the trees that are removed.

A KB Home representative explained that the drawback of using the original trees is the chance of spreading diseases. If new trees are used, they are much less prone to disease. According to the report done in March of 2004, the project could consider tree management options if trees are not removed. The representatives explained that the trees are mature in age, and are in declining health and have a history of failure. The report does state that the trees in the best health and structure are trees numbered 221, 246, 251, 252, 253, 254 and 255, but if those are retained all activities within their fall zone must be excluded. KB representatives reiterated to the commission that these seven trees are in poor condition and that the recommendation is to remove and replace all of the elms.

MOTION to preserve trees numbered 221, 246, 251, 252, 253, 254 and 255. The seeds from the trees should be propagated and the seven trees shall be replaced as needed.

M/S: Tuason/Serena

Ayes: All Ayes

Absent: Gray and Ku

Mr. King responded that in light of this motion to preserve those seven trees, the park location and amenities will have to be re-visited because of the report done in March 2004 which states "... exclude all activity within their fall zone".

MOTION to preserve the wood from the trees that are removed to be used to make commemorative plaques.

M/S: Krommenhock/McGuire

Ayes: All Ayes

Absent: Gray and Ku

Regarding the amenities that are to be located at the park, chairperson Munzel commented that restrooms are again missing from the plan. Mr. King responded that there is a "pad" close to Abel where a restroom could go. Mr. King further reported that more shade structures have been added as well as additional parking and a playground area close to Main St.

Mr. Lindsay reported that keeping the trees will impact the amenities of the park area. Chairperson Munzel and the commission agreed that it is ok if there are fewer amenities in order to preserve the trees.

Mr. King told the Commission that their suggestions would now go to the City Council.

XII. Staff Reports

NA

XIII. Liaison Reports

1. City Council

Council Member Polanski reported the following:

- The Harvest Festival was held on Saturday October 16, 2004. The biggest hit of the festival was the train.
- The 50th anniversary committee met and they are holding a time capsule contest through November 15, 2004. The committee is also taking suggestions of where to bury the time capsule. The tentative plan is to bury the time capsule on January 26, 2005.

2. Community Advisory Commission (CAC)

None

3. Senior Advisory Commission (SAC)

Bonnie Greiner, Recreation Services Manager, reported the following:

- Renovations are continuing to the Sal Cracolice Building. A new lunch window has been installed, the staff area has been extended, private offices have been added, new carpet has been installed and painting has been done.

4. Planning Commission

Commissioner Tuason reported that 6 Telecomm antennas are going to be installed at the Sports Center.

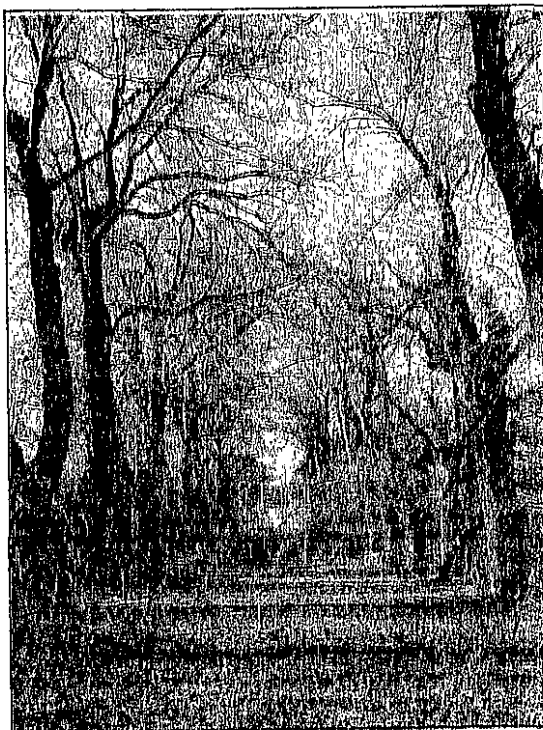
5. Youth Advisory Commission (YAC)

The Youth Advisory Commission's next meeting will be held November 18, 2004.

HORTSCIENCE INC

Tree Report

Elmwood
Milpitas CA



PREPARED FOR:

David J. Powers & Associates, Inc.
1885 The Alameda, Suite 204
San Jose CA 95126

PREPARED BY:

HortScience, Inc.
P.O. Box 754
Pleasanton CA 94566

March 2004

Tree Report Elmwood

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Attachments

Tree Location Map

Tree Survey Form

Introduction and Overview

David J. Powers & Associates, Inc. is preparing the Environmental Impact Report for the Elmwood's site in Milpitas CA. Current site use consists of open fields and an abandoned golf facility. David J. Powers & Associates, Inc. requested that HortScience, Inc. prepare a tree report for the site. This report provides the following information:

1. A survey of trees currently growing on the site.
2. An assessment of the impacts of constructing the proposed project on the trees.
3. Guidelines for tree preservation during the design, construction and maintenance phases of development.

Survey Methods

The survey included all trees greater than 6" in diameter located within and immediately adjacent to the proposed project area (as defined on the Boundary and Topographic Plan). The survey procedure consisted of the following steps:

1. Tagging each tree with a numerically coded tag;
2. Identifying the tree as to species;
3. Measuring the trunk diameter (54" above grade);
4. Evaluating the health using a scale where 1 = poor and 5 = excellent condition;
5. Noting any significant structural characteristics including decay, poor crown conformation, dieback, history of failure;
6. Assessing the tree's suitability for preservation;
7. Recording the tree's location on a map.

Description of Trees

General

One hundred eight-six (186) trees were evaluated, representing 20 species (see Table 1, following page). Trees were not distributed evenly across the site but were concentrated in several areas:

- 71 trees were present on the north edge of the property, west of Abel St. Most frequently occurring species were Arizona cypress (25 trees), river red gum (21), blackwood acacia (10) and silver dollar gum (10). Tree condition was variable due to a lack of maintenance in the recent past. A 33" Monterey pine (#404) was close to Abel and the largest tree in this group.
- 59 trees were located on the east side of Abel St. This area was dominated by the double row of American elm trees (#201 – 255). These trees were in poor condition due to a history of topping, extensive decay and a history of failure (see more detailed notes below). Two mature cottonwoods (#431 & 432) were north of the elm row. Both trees were in poor condition with multiple stems and a history of failure.

Table 1. Frequency of occurrence and condition of surveyed trees. Elmwood. Milpitas CA.

Common Name	Scientific Name	Condition			No. of Trees
		Poor (1-2)	Moderate (3)	Good (4-5)	
Blackwood acacia	<i>Acacia melanoxylon</i>	1	4	5	10
Mimosa	<i>Albizia julibrissin</i>	--	--	1	1
White alder	<i>Alnus rhombifolia</i>	--	--	1	1
Carob	<i>Ceratonia siliqua</i>	9	2	--	11
Arizona cypress	<i>Cupressus arizonica</i>	7	10	7	25
River red gum	<i>Eucalyptus camaldulensis</i>	11	9	1	21
Silver dollar gum	<i>Eucalyptus polyanthemus</i>	4	6	--	10
Red ironbark	<i>Eucalyptus sideroxylon</i>	12	--	--	12
Myoporum	<i>Myoporum laetum</i>	7	2	1	10
Canary Island date palm	<i>Phoenix canariensis</i>	--	--	1	1
Monterey pine	<i>Pinus radiata</i>	--	1	--	1
Cottonwood	<i>Populus fremontii</i>	--	2	1	3
Almond	<i>Prunus dulcis</i>	--	1	--	1
Fruitless pear	<i>Pyrus calleryana</i>	--	--	1	1
Coast live oak	<i>Quercus agrifolia</i>	--	1	--	1
Calif. pepper	<i>Schinus molle</i>	--	--	4	4
Coast redwood	<i>Sequoia sempervirens</i>	14	--	2	16
American elm	<i>Ulmus americana</i>	55	--	--	55
Siberian elm	<i>Ulmus pumila</i>	1	--	--	1
Mexican fan palm	<i>Washington filifera</i>	--	--	1	1
Total		121	38	26	186

- 34 trees were present along the Correctional Facility Access Road, south of the Hetch Hetchy easement. Included in the planting were 12 red ironbark, 11 carob and 9 myoporum. All were in generally poor condition due to poor structure, a history of topping and general lack of care. Just north of this group of trees were two coast redwoods (#189 & 190). These may be located in the Santa Clara Valley Water District easement. Both were in poor condition.
- 15 trees were present in the area west of the Correctional Facility. 14 coast redwoods were immediately adjacent to I-880. Most were in poor condition due to a history of topping. One myoporum (#145) was more centrally located.
- 7 trees were present in the abandoned golf facility including 4 young Calif. pepper, a single coast live oak, a fruitless pear and Mexican fan palm. In addition, a number of unsurveyed trees (<6" diameter) were also located in this area.

Results for individual trees are found in the **Tree Survey Form** and **Tree Location Map** (see **Attachments**).

Observations of the historical elm grove

All of the 55 trees had been topped many years ago. Large lateral branches were either removed or cut to large stubs. There was extensive decay at the topping point as well as at old pruning wounds and sites of branch failure (see below left, red arrow). Sprouts that developed following topping were 6" to 10" in diameter. A set of utility lines paralleled the northside of the planting (see photo, below right). Trees on this side had been trimmed to provide clearance and were generally smaller in diameter with asymmetric crowns.



All of the elms were in poor condition. Dieback of twigs was common. For trees #204, 206, 214, 234, 242, 244, and 248, dieback extended into the main trunk. These trees were little more than a decay trunk with a few small sprouts.

Failure of branches and stems was common. We observed branches that had failed at the point of attachment to the stem as well as due to heavy weight. Several stems failed just below the topping cut. Decay was so extensive that the upper stem, where most of the branches were attached, simply broke off.

Suitability for Preservation

Before evaluating the impacts that will occur during development, it is important to consider the quality of the tree resource itself, and the potential for individual trees to function well over an extended length of time. Trees that are preserved on development sites must be carefully selected to make sure that they may survive development impacts, adapt to a new environment and perform well in the landscape.

Our goal is to identify trees that have the potential for long-term health, structural stability and longevity. For trees growing in open fields, away from people and property, the presence of structural defects and/or poor health presents a low risk of damage or injury if they fail. However, when we invite people to use areas within and adjacent to such trees, we must be concerned about their safety. Therefore, where development encroaches into existing plantings, we must consider the potential for trees to grow and thrive in a new environment as well as their ability to remain structurally stable.

Evaluation of suitability for preservation considers several factors:

- **Tree health**
Healthy, vigorous trees are better able to tolerate impacts such as root injury, demolition of existing structures, changes in soil grade and moisture, and soil compaction than are non-vigorous trees.
- **Structural integrity**
Trees with significant amounts of wood decay and other structural defects that cannot be corrected are likely to fail. Such trees should not be preserved in areas where damage to people or property is likely.
- **Species response**
There is a wide variation in the response of individual species to construction impacts and changes in the environment. In our experience, species such as Monterey pine are difficult to preserve. They rarely recover from injuries to the root system. In contrast, other species, such as coast live oak and coast redwood, are more tolerant of site disturbance.
- **Tree age and longevity**
Old trees, while having significant emotional and aesthetic appeal, have limited physiological capacity to adjust to an altered environment. Young trees are better able to generate new tissue and respond to change.

Each tree was rated for suitability for preservation based upon its age, health, structural condition and ability to safely coexist within a development environment (see ***Tree Survey Form***).

Good	Trees with good health and structural stability that have the potential for longevity at the site. Twenty (20) trees were rated as having good suitability for preservation. Included in this group were 5 Arizona cypress and 5 blackwood acacia, both at the north edge of the property as well as 4 Calif. pepper in the golf course facility.
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Moderate	Trees with fair health and/or structural defects that may be abated with treatment. Trees in this category require more intense management and monitoring, and may have shorter life-spans than those in the "good" category. Twelve (12) trees were rated as having moderate suitability for preservation including 5 Arizona cypress and 2 river red gum, both at the north edge of the site.
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Poor	Trees in poor health or with significant defects in structure that cannot be abated with treatment. Trees can be expected to decline regardless of management. The species or individual tree may possess either characteristics that are undesirable in landscape settings or be unsuited for use areas. One hundred fifty-three (153) trees were rated as having poor suitability for preservation including 55 American elm, 17 river red gum, 15 Arizona cypress, 14 coast redwood, 12 red ironbark, 11 carob and 10 silver dollar gum.
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We cannot recommend retention of trees with low suitability for preservation in areas where people or property will be present. Retention of trees with moderate suitability for preservation depends upon the intensity of proposed site changes.

Evaluation of Impacts and Recommendations for Removal

Appropriate tree retention develops a practical match between the location, intensity of construction activity and the quality and health of trees. The **Tree Survey Form** was the reference point for tree condition and quality. For the overall site, potential impacts from construction were evaluated using the Vesting Tentative Map (dated June 2003) prepared by Ruggeri-Jensen-Azar & Associates, project engineers. Site plans call for high-density residential to be constructed on the east side of Abel Street as well as west side, north of the Hetch-Hetchy easement. No development was indicated for the area west of the Correctional Facility. David J. Powers, however, indicated that this area and the golf facility will both be developed.

You also provided the Preliminary Landscape Plans for Elm Park (dated July 2003) prepared by Randall Planning & Design Inc. This area encompasses the historical elm grove (trees #201 – 255). Tree canopy outlines and trunk locations were present. The design would create a park under the canopy of the 35 elms on the south side of the double row (as defined by the fence between the open field and fire facility). Proposed use includes picnic tables, benches, bocce ball and horseshoes. A sidewalk would run down the center of the row.

Impacts to trees will occur in several ways. The golf facility will be demolished. Given the nature of the site, this will adversely impact trees. The swale on the north side of the property will be removed and replaced, impacting numerous trees adjacent to it. Grading for lots and roads may damage tree roots both directly through mechanical injury, and indirectly by altering soil structure, drainage, and biology. Finally, construction of new residences and associated infrastructure will impact trees. Most trees within the property are located within areas proposed for development.

Using the Vesting Tentative Map the potential impacts from construction were assessed for each tree. Given the nature of the project, there are no real opportunities for tree preservation. For this reason, we recommend removal of 151 trees (Table 2). Thirty-three (33) trees with moderate and good suitability for preservation will be removed due to impacts from development. One hundred eighteen (118) trees recommended for removal have poor suitability for preservation and would not be assets to the new project.

Included in the recommendations for removal are the 55 trees in the historical elm grove. In my view, the proposed use of the area around the trees is incompatible with the existing resource due to the very high potential for tree failure. As noted previously, the elms have poor suitability for preservation and a strong history of failure. To invite people to use the area beneath these trees would be inappropriate.

We tentatively recommend preservation of 34 trees: 32 along the Correctional Facility Access Road and 2 on the Santa Clara Valley Water District property. This recommendation is tentative as development may impact the access road. We also assume the two trees on the SCVWD property will not be impacted by development, an assumption that cannot be verified until more detailed site plans are prepared.

We also recommend relocation of one surveyed tree, a 9" coast live oak (#150). This tree can best be transplanted by side-boxing. In addition, we identified 13 Chinese pistache (*Pistachia chinensis*), 9 purpleleaf plum (*Prunus cerasifera* 'Atropurpurea') and 10 Bradford pear (*Pyrus calleryana* 'Bradford') that were suitable for relocation by mechanical tree spade.

Options for Management of the Elm Grove

Under normal circumstances, there should be no question about the management of these trees. They have poor suitability for preservation and will not be long-term assets to the project. The trees are mature in age and character, have been poorly maintained for many years, are in declining health and have a history of failure.

Given the historic nature of the planting, the project could consider several management options other than removal:

1. Retain all 55 trees by revising the proposed plans for the project to exclude all activity within the fall zone of the trees. Fencing and signage would be required to discourage activity beneath the canopy. A path through the grove could be created by removing selected trees. Tree appearance (and structure) would be improved by pruning.
2. Retain trees with best health and structure but exclude all activity within their fall zone. Possible trees include #221, 246, 251, 252, 253, 254 and 255. Retention requires a long-term commitment to crown restoration. Note that these seven trees are in poor condition.
3. Contract with a nursery to propagate elms from seeds or scion wood collected from the grove. There are a number of small trees (less than 0.5 in. diameter) at the site. It is not obvious if these arose from seeds or as sprouts from the lower trunk and roots. Replant with trees grown from the existing elms.

I reiterate that our recommendation is to remove and replace all of the elms.

Tree Preservation Guidelines

The goal of tree preservation is not merely tree survival during development but maintenance of tree health and beauty for many years. Trees retained on sites that are either subject to extensive injury during construction or are inadequately maintained become a liability rather than an asset. The response of individual trees will depend on the amount of excavation and grading, the care with which demolition is undertaken, and the construction methods. These impacts can be minimized by coordinating any construction activity inside the **TREE PROTECTION ZONE**.

The following recommendations will help reduce impacts to trees from development and maintain and improve their health and vitality through the clearing, grading and construction phases.

Design recommendations

1. Any plan affecting trees should be reviewed by the Consulting Arborist with regard to tree impacts. These include, but are not limited to, improvement plans, landscape and irrigation plans and demolition plans.
2. The Consulting Arborist will identify a **TREE PROTECTION ZONE** for trees to be preserved in which no soil disturbance is permitted. The **TREE PROTECTION ZONE** shall be defined as the edge of pavement for trees along the access road and edge of property for the redwoods on the SCVWD property.
3. Any herbicides placed under paving materials must be safe for use around trees and labeled for that use.

Pre-construction treatments and recommendations

1. Prior to the start of demolition, the Consulting Arborist shall meet with the contractor to review the location of tree protection fencing and work procedures.
2. All trees to be retained shall be fenced to completely enclose the **TREE PROTECTION ZONE** prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fencing shall be placed at the edge of the **TREE PROTECTION ZONE**. Fences are to remain until all grading and construction is completed.

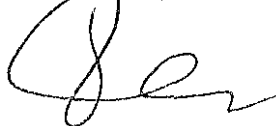
Recommendations for tree protection during construction

1. No grading, construction, demolition or other work shall occur within the **TREE PROTECTION ZONE**. Any modifications must be approved and monitored by the Consulting Arborist.
2. During excavation, any roots encountered greater than 2" diameter shall be severed cleanly with a saw or lopper.
3. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.
4. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the **TREE PROTECTION ZONE**.
5. Any additional tree pruning needed for clearance during construction must be performed by a Certified Arborist and not by construction personnel.

Maintenance of impacted trees

Given the nature of the trees to be preserved, provisions for monitoring tree health and structural stability following construction must be made a priority. As trees age, the likelihood of failure of branches or entire trees increases. Therefore, the management plan must include a regular inspection for hazard potential.

HortScience, Inc.



James R. Clark, Ph.D.
Certified Arborist WE-0846

HORTSCIENCE TREE SURVEY

Elmwood project
David J. Powers & Associates
Milpitas CA
October 2003 & February 2004

TREE No.	LOCATION	SPECIES	TRUNK DIAMETER (in.)	CONDITION 1=poor 5=excellent	SUITABILITY for PRESERVATION	COMMENTS
145	W. of corr'l. fac.	Myoporum	8,7,6,6,5	4	Good	Multiple stems @ base; very full & spreading crown.
146	Adj. I-880	Coast redwood	17	2	Poor	Topped @ 18' for power lines.
147	Adj. I-880	Coast redwood	15,15	2	Poor	Codominant trunks @ base; topped @ 15' for power lines.
148	Adj. I-880	Coast redwood	10,10	4	Good	Codominant trunks @ base; under power lines; will be topped soon.
149	Adj. I-880	Coast redwood	11,11,9,6	4	Good	Multiple stems @ base; under power lines; will be topped soon.
150	Pitch & putt	Coast live oak	9	3	Moderate	Good tree; twig & branch dieback in upper crown.
151	Pitch & putt	Fruitless pear	10	4	Good	Multiple stems @ 7'; good form & structure.
152	Pitch & putt	Mexican fan palm	17	5	Good	Excellent form & structure; 2' of clear trunk.
153	Pitch & putt	Calif. pepper	10,7	4	Good	Codominant trunks @ base; one branch damaged by wall.
154	Pitch & putt	Calif. pepper	10,8	4	Good	Codominant trunks @ base; one branch damaged by wall.
155	Pitch & putt	Calif. pepper	7	4	Good	Good young tree; crown bows S..
156	Pitch & putt	Calif. pepper	7,6	4	Good	Codominant trunks @ 4'; crown bows S..
157	Corr'l fac. access rd	Carob	7	1	Poor	Codominant trunks @ 6'; poor form & structure; basal rodent damage.
158	Corr'l fac. access rd	Carob	9	2	Poor	Multiple stems @ 7'; poor form & structure; trunk wound; basal rodent damage.
159	Corr'l fac. access rd	Red ironbark	19	2	Poor	Codominant trunks @ 7'; topped @ 15'.
160	Corr'l fac. access rd	Red ironbark	15	2	Poor	Codominant trunks @ 12'; topped @ 15'.
161	Corr'l fac. access rd	Red ironbark	15	2	Poor	Multiple stems @ 12'; topped @ 15'.
162	Corr'l fac. access rd	Red ironbark	15	2	Poor	Codominant trunks @ 6'; topped @ 15'.
163	Corr'l fac. access rd	Red ironbark	11	2	Poor	Crook @ 8'; topped @ 15'.
164	Corr'l fac. access rd	Red ironbark	13	2	Poor	Codominant trunks @ 10'; topped @ 15'.

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165	Corr'l fac. access rd	Carob	11	2	Poor	Multiple stems @ 5'; poor form & structure; heavy lean.
166	Corr'l fac. access rd	Carob	9	2	Poor	Codominant trunks @ 5'; poor form & structure.
167	Corr'l fac. access rd	Carob	7	2	Poor	Multiple stems @ 7'; poor form & structure; basal rodent damage.
168	Corr'l fac. access rd	Red ironbark	10	2	Poor	Codominant trunks @ 6'; topped @ 15'.
169	Corr'l fac. access rd	Red ironbark	9	2	Poor	Topped @ 15'.
170	Corr'l fac. access rd	Red ironbark	10	2	Poor	Topped @ 15'.
171	Corr'l fac. access rd	Red ironbark	13	2	Poor	Topped @ 15'.
172	Corr'l fac. access rd	Carob	8	2	Poor	Multiple stems @ 7'; poor form & structure.
173	Corr'l fac. access rd	Carob	9	3	Poor	Multiple stems @ 6'; poor form & structure; branch wound.
174	Corr'l fac. access rd	Carob	7	2	Poor	Multiple stems @ 7'; poor form & structure; sparse crown.
175	Corr'l fac. access rd	Myoporum	9,9,7,6,6,5,3	3	Poor	Multiple stems @ 2'; poor form & structure.
176	Corr'l fac. access rd	Red ironbark	10	1	Poor	Topped @ 15'; all but dead.
177	Corr'l fac. access rd	Myoporum	7,7,6,5,5,4	3	Poor	Multiple stems @ 2'; history of branch failure.
178	Corr'l fac. access rd	Myoporum	10,9,7,6	2	Poor	Multiple stems @ 2'; history of branch failure; pruned heavily away from road.
179	Corr'l fac. access rd	Myoporum	11,7,6	2	Poor	Multiple stems @ 2'; history of branch failure; pruned heavily away from road.
180	Corr'l fac. access rd	Myoporum	10,9,9	2	Poor	Multiple stems @ 3'; pruned heavily away from road.
181	Corr'l fac. access rd	Myoporum	11,10	2	Poor	Codominant trunks @ 4'; pruned heavily away from road.
182	Corr'l fac. access rd	Myoporum	11,9,7,7	2	Poor	Multiple stems @ 2'; pruned heavily away from road.
183	Corr'l fac. access rd	Carob	8	1	Poor	All but dead.

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184	Corr'l fac. access rd	Carob	14	3	Poor	Multiple stems @ 6'; poor form & structure; pruned heavily away from road.
185	Corr'l fac. access rd	Carob	12	2	Poor	Codominant trunks @ 5'; poor form & structure; pruned heavily away from road.
186	Corr'l fac. access rd	Myoporum	7.7	2	Poor	Codominant trunks @ 4'; pruned heavily away from road.
187	Corr'l fac. access rd	Myoporum	14	2	Poor	Heavy lean to the W.; poor form & structure.
188	Corr'l fac. access rd	Red ironbark	16	1	Poor	Codominant trunks @ 5'; topped @ 15'; all but dead.
189	W. side, Abel St.; SCVWD?	Coast redwood	12	2	Poor	Half of crown gone; all but dead.
190	W. side, Abel St., SCVWD?	Coast redwood	9	1	Poor	Declining; all but dead.
201	E. side, Abel St.	American elm	40	2	Poor	Edge; codominant trunk removed @ 10'; decayed; remaining stem upright; good form; decay @ topping point.
202	E. side, Abel St.	American elm	43	2	Poor	Edge; huge trunk wound @ 8' on NE, decayed @ edges; multiple attachments (3) @ 25'; crown bowed NE; decay @ topping point.
203	E. side, Abel St.	American elm	36	2	Poor	Codominant trunks @ 20'; decay @ topping points.
204	E. side, Abel St.	American elm	33	2	Poor	Just a stem with small laterals; 2 large trunk cavities @ 8'.
205	E. side, Abel St.	American elm	34	1	Poor	Extensive trunk decay; heavy lateral branch to center.
206	E. side, Abel St.	American elm	33	2	Poor	Just stem with small sprouts; extensive trunk decay.

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207	E. side, Abel St.	American elm	38	2	Poor	Codominant trunks @ 12'; one stem S-facing, lacks taper; decay @ topping points & @ old pruning wounds.
208	E. side, Abel St.	American elm	25	1	Poor	Sinuous trunk with decay @ angle points; crown sprouts with 2 small laterals.
209	E. side, Abel St.	American elm	33	2	Poor	Trunk bowed S.; decay @ topping point.
210	E. side, Abel St.	American elm	33	2	Poor	Codominant trunks @ 12'; upright; trunk decay.
211	E. side, Abel St.	American elm	34	2	Poor	Decay @ topping point & old pruning wounds.
212	E. side, Abel St.	American elm	30	2	Poor	Stem has died back 3' from topping point; extensive trunk decay; vase-shaped.
213	E. side, Abel St.	American elm	32	2	Poor	Codominant trunks @ 12'; good branch distribution on N. stem; small trunk cavities.
214	E. side, Abel St.	American elm	--	1	Poor	Upright lateral atop small arc of live trunk; 2 standing dead stems.
215	E. side, Abel St.	American elm	35	2	Poor	Codominant trunks @ 20'; trunk decay & @ topping point.
216	E. side, Abel St.	American elm	30	1	Poor	Extensive decay @ & below topping point; huge cavity on NW @ 6'.
217	E. side, Abel St.	American elm	32	2	Poor	Small trunk cavities; decay @ topping point.
218	E. side, Abel St.	American elm	29	2	Poor	Small, high crown; extensive trunk decay.
219	E. side, Abel St.	American elm	33	2	Poor	Cavity on S. @ old pruning wound; decay @ topping point; high crown.
220	E. side, Abel St.	American elm	30	2	Poor	Small, high crown (sprouts @ topping point); decay @ topping point.
221	E. side, Abel St.	American elm	33	2	Poor	Adjacent to fence; high crown; resprouts appear well-attached.

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222	E. side, Abel St.	American elm	32	2	Poor	Small high crown; long trunk cavity on utility line side.
223	E. side, Abel St.	American elm	32	2	Poor	Low scaffolds stubbed & very poor; rest of crown upright; extensive trunk decay.
224	E. side, Abel St.	American elm	24	2	Poor	Small high crown.
225	E. side, Abel St.	American elm	35	2	Poor	Codominant trunks @ 20'; good form; branch failure @ topping point.
226	E. side, Abel St.	American elm	31	2	Poor	Small high crown.
227	E. side, Abel St.	American elm	32	2	Poor	Codominant trunks @ 12'; 1 stem suppressed; 2nd stem heavy to center; decay @ topping point.
228	E. side, Abel St.	American elm	32	2	Poor	Small high crown; leans to center.
229	E. side, Abel St.	American elm	36	2	Poor	Good form but beehive @ 7' & extensive decay & failure @ topping.
230	E. side, Abel St.	American elm	31	1	Poor	Very poor; extensive decay & asymmetric form; scaffold failure.
231	E. side, Abel St.	American elm	30	1	Poor	15' tall stem.
232	E. side, Abel St.	American elm	28	1	Poor	Very poor; extensive decay & asymmetric form; scaffold failure.
233	E. side, Abel St.	American elm	34	2	Poor	Crown one-sided towards center; trunk cavity; poor form.
234	E. side, Abel St.	American elm	28	1	Poor	7' tall trunk with small sprouts.
235	E. side, Abel St.	American elm	34	2	Poor	High crown; small branch failures.
236	E. side, Abel St.	American elm	27	2	Poor	Topped @ 18 rather than higher'; 3 sprouts are well-spaced.
237	E. side, Abel St.	American elm	33	1	Poor	Codominant trunks @ 8'; failure on 1 stem just below topping point; extensive trunk decay.

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238	E. side, Abel St.	American elm	29	1	Poor	Codominant trunks @ 15'; 1 stem failed due to decay; 2nd stem has high, small canopy.
239	E. side, Abel St.	American elm	35	2	Poor	Narrow crown with 3" end weight failure; numerous spouts @ topping point.
240	E. side, Abel St.	American elm	26	1	Poor	High, scant crown; large, low trunk cavity.
241	E. side, Abel St.	American elm	32	2	Poor	Small canopy with 8" end weight failure; trunk cavities.
242	E. side, Abel St.	American elm	23	1	Poor	Just a trunk with extensive decay.
243	E. side, Abel St.	American elm	34	2	Poor	Codominant trunks @ 14'; with cavity @ attachment; branch failures, both end weight & attachment; extensive decay at topping point.
244	E. side, Abel St.	American elm	28	1	Poor	Just a small trunk with 1" sprouts.
245	E. side, Abel St.	American elm	32	2	Poor	High, narrow crown.
246	E. side, Abel St.	American elm	29	2	Poor	Slight bow to center; stubbed on wire side.
247	E. side, Abel St.	American elm	33	2	Poor	Narrow crown; numerous sprouts @ topping point
248	E. side, Abel St.	American elm	30	1	Poor	Just a trunk; only live branches arise @ 12'; extensive trunk decay.
249	E. side, Abel St.	American elm	29	2	Poor	Interior; small canopy.
250	E. side, Abel St.	American elm	32	1	Poor	Very large trunk cavity @ 8' on NW.
251	E. side, Abel St.	American elm	33	2	Poor	Stems @ topping point appear well-attached.
252	E. side, Abel St.	American elm	34	2	Poor	High crown with numerous sprouts @ topping point.
253	E. side, Abel St.	American elm	34	2	Poor	Stems @ topping point appear well-attached.
254	E. side, Abel St.	American elm	36	2	Poor	Edge; one-sided; trunk cavities.
255	E. side, Abel St.	American elm	36	2	Poor	Edge; one-sided; trunk cavities.

HORTSCIENCE TREE SURVEY

Elmwood project
David J. Powers & Associates
Milpitas CA
October 2003 & February 2004

TREE No.	LOCATION	SPECIES	TRUNK DIAMETER (in.)	CONDITION 1=poor 5=excellent	SUITABILITY for PRESERVATION	COMMENTS
305	Adj. I-880	Coast redwood	18,8	2	Poor	Codominant trunks @ base; topped @ 18' for power lines.
306	Adj. I-880	Coast redwood	23	2	Poor	Topped @ 18' for power lines.
307	Adj. I-880	Coast redwood	20,18	2	Poor	Topped @ 20' for power lines.
308	Adj. I-880	Coast redwood	18,14	2	Poor	Topped @ 18' for power lines.
309	Adj. I-880	Coast redwood	17	2	Poor	Topped @ 18' for power lines.
310	Adj. I-880	Coast redwood	18,17,7	2	Poor	Topped @ 18' for power lines.
311	Adj. I-880	Coast redwood	23	2	Poor	Topped @ 18' for power lines.
312	Adj. I-880	Coast redwood	18	2	Poor	Topped @ 15' for power lines.
313	Adj. I-880	Coast redwood	16,14,9	2	Poor	Multiple stems @ base; topped @ 15' for power lines.
314	Adj. I-880	Coast redwood	22	2	Poor	Topped @ 15' for power lines.
404	N. edge of site	Monterey pine	33	3	Poor	Pine pitch canker; hazard beam; history of branch failure.
405	N. edge of site	Arizona cypress	18	3	Poor	History of branch failure; leans S.
406	N. edge of site	Siberian elm	7,6,5,4,4,3	2	Poor	Multiple stems @ base; pruned away from power lines.
407	N. edge of site	Arizona cypress	15	2	Poor	Declining; sparse crown; leans S..
408	N. edge of site	Arizona cypress	16,15,7,5	4	Moderate	Multiple stems @ 3'; history of branch failure
409	N. edge of site	Arizona cypress	6,4	3	Poor	Codominant trunks @ 2'; poor form & structure.
410	N. edge of site	Arizona cypress	9,6,4	2	Poor	Multiple stems @ 2'; declining.
411	N. edge of site	Arizona cypress	5,5,4,3	3	Moderate	Multiple stems @ 3'; slight lean S.
412	N. edge of site	Arizona cypress	8,7,7	1	Poor	Multiple stems @ 3'; lost 12" stem; basal cavity.
413	N. edge of site	Arizona cypress	8,8	4	Moderate	Codominant trunks @ 2'; seam.
414	N. edge of site	Arizona cypress	6	3	Poor	Codominant trunks @ 1'; trunk wound; declining.

HORTSCIENCE TREE SURVEY

Elmwood project
David J. Powers & Associates
Milpitas CA
October 2003 & February 2004

TREE No.	LOCATION	SPECIES	TRUNK DIAMETER (in.)	CONDITION 1=poor 5=excellent	SUITABILITY for PRESERVATION	COMMENTS
415	N. edge of site	Arizona cypress	6	3	Poor	Declining.
416	N. edge of site	Arizona cypress	9	1	Poor	Partial failure; lost central leader
417	N. edge of site	Arizona cypress	7	3	Poor	Leans S.; poor form & structure.
418	N. edge of site	Arizona cypress	7	4	Good	Good young tree.
419	N. edge of site	Arizona cypress	6	3	Poor	Leans S.; trunk wound; exposed roots/partial failure.
420	N. edge of site	Silver dollar gum	9,8,7,7,6,6	2	Poor	Multiple stems @ base, topped for power lines.
421	N. edge of site	Silver dollar gum	19,17,9,8	3	Poor	Multiple stems @ 3'; stubbed for power lines.
422	N. edge of site	Silver dollar gum	12,8	2	Poor	Multiple stems @ 2'; suppressed.
423	N. edge of site	Silver dollar gum	22	3	Poor	Multiple stems @ 5'; stubbed for power lines.
424	N. edge of site	Silver dollar gum	19,11,6	3	Poor	Multiple stems @ 4'; stubbed for power lines.
425	N. edge of site	Arizona cypress	5	3	Poor	Lcl; canker.
426	N. edge of site	Arizona cypress	5,5,5	2	Poor	Multiple stems @ 3'; declining.
427	N. edge of site	Cottonwood	8,8	3	Poor	Codominant trunks @ base; spreading apart.
428	N. edge of site	Arizona cypress	8,5,4	3	Moderate	Multiple stems @ 3'; trunk wound.
429	N. edge of site	Arizona cypress	7	3	Poor	Twig & branch dieback; weak central leader.
430	E. side, Abel St.	Almond	4,3,2	3	Moderate	Multiple stems @ base; good young tree.
431	E. side, Abel St.	Cottonwood	15,11,9	3	Poor	Multiple stems @ 3'; engulfed in ivy; history of branch failure.
432	E. side, Abel St.	Cottonwood	20,14,12,7	3	Poor	Multiple stems @ 3'; history of branch failure.
433	E. side, Abel St.	Canary Island date palm	8	5	Good	Fronds to base; good young tree.
434	N. edge of site	Silver dollar gum	8	3	Poor	Crown bows S.; poor form & structure.
436	N. edge of site	Blackwood acacia	3	3	Moderate	Good young tree; all leaves show tip burn.
437	N. edge of site	River red gum	7	2	Poor	Lerp psyllid; suppressed.
438	N. edge of site	River red gum	9	3	Poor	Injured by lerp psyllid; crowded with poor form & structure.

HORTSCIENCE TREE SURVEY

Elmwood project
David J. Powers & Associates
Milpitas CA
October 2003 & February 2004

TREE No.	LOCATION	SPECIES	TRUNK DIAMETER (in.)	CONDITION 1=poor 5=excellent	SUITABILITY for PRESERVATION	COMMENTS
439	N. edge of site	River red gum	9	2	Poor	Injured by lerp psyllid; crowded with poor form & structure.
440	N. edge of site	River red gum	13	2	Poor	Injured by lerp psyllid; best of the bunch.
441	N. edge of site	River red gum	9	2	Poor	Injured by lerp psyllid; crowded with poor form & structure.
442	N. edge of site	River red gum	9	2	Poor	Codominant trunks @ 5'; history of branch failure; one stem with branch wound.
443	N. edge of site	Silver dollar gum	16,13,12,12	2	Poor	Multiple stems @ base; poor form & structure; stubbed for power lines.
444	N. edge of site	River red gum	11	3	Poor	Injured by lerp psyllid; crowded.
445	N. edge of site	Arizona cypress	8	0	--	Dead.
446	N. edge of site	River red gum	9	2	Poor	Injured by lerp psyllid; poor form & structure..
448	N. edge of site	Blackwood acacia	8	4	Good	Good young tree.
477	N. edge of site	Arizona cypress	11	2	Poor	Trunk wound with decay; leans S.
478	N. edge of site	River red gum	9	1	Poor	Neighbor tree fell & pushed this one over.
479	N. edge of site	Silver dollar gum	13,13,11,9,5	3	Poor	Multiple stems @ 2'; stubbed for power lines.
480	N. edge of site	Blackwood acacia	5	2	Poor	Poor form & structure; rcl.
481	N. edge of site	Arizona cypress	10	4	Good	Good tree; upright with full crown
482	N. edge of site	Blackwood acacia	7	4	Good	Good young tree; a little one-sided.
483	N. edge of site	River red gum	13	2	Poor	Bark checking; declining.
484	N. edge of site	Silver dollar gum	12,11,6,6,5,5	2	Poor	Multiple stems @ base; topped for power lines; growing through fence.
485	N. edge of site	Arizona cypress	9	1	Poor	Partial failure; all but dead.
486	N. edge of site	Blackwood acacia	7	4	Good	Good young tree.
487	N. edge of site	Silver dollar gum	8	3	Poor	Leans S.; poor form & structure.
488	N. edge of site	River red gum	11,8,7,4	3	Poor	Multiple stems @ base; declining.
489	N. edge of site	River red gum	10	3	Moderate	Injured by lerp psyllid; leans W.
490	N. edge of site	Arizona cypress	7,7	4	Moderate	Codominant trunks @ 3'; a little crowded.

HORTSCIENCE TREE SURVEY



Elmwood project
David J. Powers & Associates
Milpitas CA
October 2003 & February 2004

TREE No.	LOCATION	SPECIES	TRUNK DIAMETER (in.)	CONDITION 1=poor 5=excellent	SUITABILITY for PRESERVATION	COMMENTS
491	N. edge of site	River red gum	10	2	Poor	Lcl; lerp psyllid damage.
492	N. edge of site	River red gum	11	2	Poor	Multiple stems @ 8'; lcl.
493	N. edge of site	River red gum	11	4	Good	Upright with good form & structure; some lerp psyllid damage.
494	N. edge of site	Mimosa	5,3	4	Moderate	Codominant trunks @ base; good young tree; growing in fence.
495	N. edge of site	Blackwood acacia	5	3	Poor	Good form but sparse canopy; suppressed.
496	N. edge of site	Blackwood acacia	4	4	Good	Good young tree.
497	N. edge of site	River red gum	10	3	Poor	High crown; one-sided; girdled by stake tie.
498	N. edge of site	River red gum	9	3	Poor	High crown; leaning & one-sided.
499	N. edge of site	River red gum	11	3	Poor	Leaning; one-sided.
500	N. edge of site	Arizona cypress	13	4	Good	Good tree; full crown; slight lean.
503	N. edge of site	Blackwood acacia	6	4	Good	Good young tree; a little crowded & one-sided.
504	N. edge of site	River red gum	10	3	Poor	Leans S.; some lerp psyllid damage; girdled by stake tie.
505	N. edge of site	Blackwood acacia	6	3	Poor	Crowded; one-sided.
506	N. edge of site	Blackwood acacia	5	3	Poor	Codominant trunks @ 8'; poor form & structure; one-sided.
507	N. edge of site	River red gum	12	2	Poor	Codominant trunks @ 10'; history of branch failure.
508	N. edge of site	River red gum	14	3	Moderate	Slight lean & one-sided.
509	N. edge of site	Arizona cypress	14	4	Good	Good tree; full crown.
510	N. edge of site	White alder	5,4,4,3	4	Moderate	Multiple stems @ base; may be sprouts from cut stump.

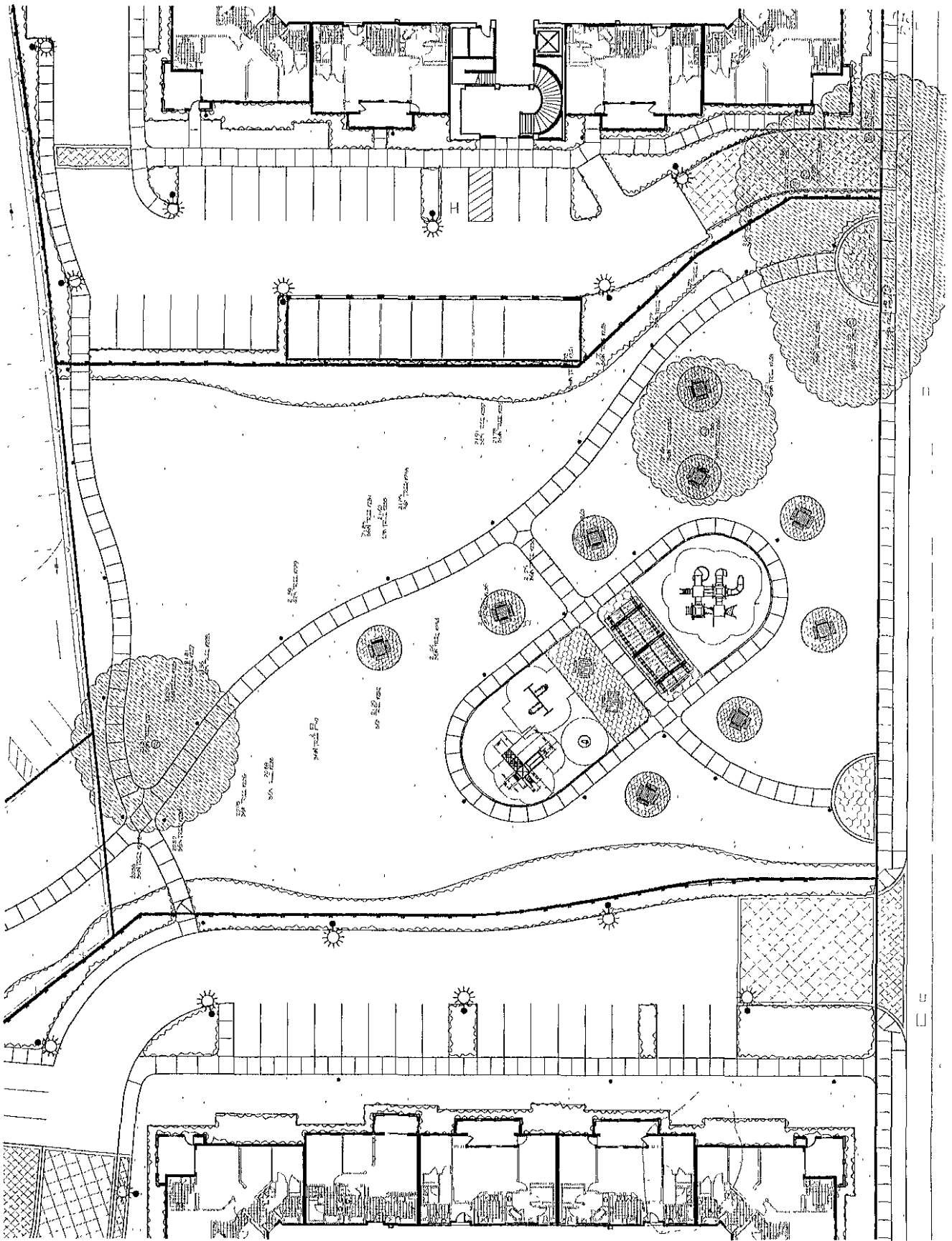
MEMORANDUM

Department of Planning & Neighborhood Services



To: Planning Commission
From: Troy Fujimoto, Acting Associate Planner
Subject: Illustration of the PRCRC's Recommendation
Date: November 10, 2004

The attached graphic represents the "unsafe zone" around each of the seven elm trees the PRCRC recommend leaving in place. Please refer to the Planning Commission staff report for a detailed discussion of the proposed Elm Park and staff's recommendation.



RESOLUTION NO.7401

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE
EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH KB HOME SOUTH BAY, INC.,
MILPITAS REDEVELOPMENT AGENCY, AND COUNTY OF SANTA CLARA**

WHEREAS, The City Council of the City of Milpitas originally approved and adopted the Redevelopment Plan (the "Redevelopment Plan") for the Milpitas Redevelopment Project No. 1 (the "Project") on September 21, 1976 by Ordinance No. 192 and amended on September 4, 1979, by Ordinance No. 192.1, on May 4, 1982, by Ordinance No. 192.2, on November 27, 1984 by Ordinance No. 192.3, on December 9, 1986, by Ordinance No. 192.4, on April 16, 1991, by Ordinance No. 192.6A, on December 9, 1994, by Ordinance No. 192.9, on October 15, 1996, by Ordinance No. 192.11, on June 17, 2003, by Ordinance No. 192.14; and

WHEREAS, the Milpitas Redevelopment Agency (the "Agency") is engaged in activities to implement the Redevelopment Plan for the Project; and

WHEREAS, the provision of affordable housing is consistent with the Redevelopment Plan and State Law; and

WHEREAS, the City of Milpitas via the adoption of the Redevelopment Plan and subsequent amendments has pledged to cooperate with the Agency; and

WHEREAS, the Agency has entered into a Purchase Agreement with the County of Santa Clara ("County") ("County-Agency Agreement"), whereby the County will sell to the Agency property commonly identified as the Elmwood/Abel property; and

WHEREAS, KB Home South Bay, Inc., has entered into certain agreements with the County to purchase the Elmwood/Abel property subject to the terms of the County-Agency Agreement; and

WHEREAS, the Agency, County, KB Home South Bay Inc. and the City of Milpitas desire to enter into a Memorandum of Understanding to provide certain assurance related to the development of affordable housing units.

NOW, THEREFORE, be it resolved by the Council of the City of Milpitas that it hereby approves a Memorandum of Understanding and authorizes the execution of said agreement.

PASSED AND ADOPTED this 18th day of May 2004, by the following vote:

AYES: (4) Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, and Polanski

NOES: (0) None

ABSENT: (0) None

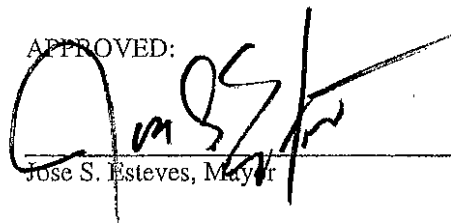
ABSTAIN: (1) Councilmember Livengood

ATTEST:



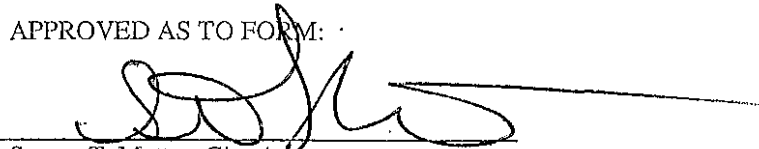
Gail Blalock, City Clerk

APPROVED:



Jose S. Esteves, Mayor

APPROVED AS TO FORM:



Steven T. Matlas, City Attorney

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**MEMORANDUM OF UNDERSTANDING
KB HOME SOUTH BAY, INC., MILPITAS REDEVELOPMENT AGENCY,
CITY OF MILPITAS AND COUNTY OF SANTA CLARA
AFFORDABLE HOUSING ON THE ELMWOOD PROPERTY**

THIS MEMORANDUM OF UNDERSTANDING is entered into by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (hereinafter "Agency"), the City of Milpitas, a public body, corporate and politic ("City"), KB Home South Bay Inc., a California corporation (hereinafter "Participant"), and the County of Santa Clara, a political subdivision of the State of California ("County") (collectively the "Parties").

RECITALS

WHEREAS, County and the Agency have entered into that certain Purchase Agreement dated as of August 19, 2003 ("County-Agency Agreement"), whereby County has agreed to sell to Agency that real property located in Milpitas, California, and more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference ("the Property").

WHEREAS, County and Participant have entered into that certain Agreement for Purchase and Sale of Real Property dated as of August __, 2003, whereby County has agreed to sell the Property to Participant, subject to the terms of the County-Agency Agreement ("County-Participant Agreement").

WHEREAS, the County-Participant Agreement requires Participant to construct a certain number of for-sale and for-rent affordable housing units on the Property and Agency and Participant have negotiated a different affordable housing program, whereby Participant would develop a housing project on the Property that consists of approximately 720 residential units.

WHEREAS, the County-Participant Agreement requires Participant to make not fewer than twenty percent (20%) of the units on the Property affordable to persons of very low, low and moderate income at affordable prices (the "County Affordability Requirement").

WHEREAS, this MOU, the DDA, and the construction of the 208 affordable housing units are intended to satisfy the requirements of the Policy C-I-2 of the Milpitas General Plan and Policy 3.6 of the Midtown Specific Plan.

WHEREAS, this MOU and DDA will result in the construction of 208 affordable housing units.

WHEREAS, the Property is made up of two separate parcels, Parcel C and Parcel D, and Participant is willing to construct 85 for-sale units affordable to persons of moderate income on Parcel C and 25 for sale units affordable to persons of moderate income on Parcel D.

WHEREAS, the Parties agree that the County requirements for affordable housing are to be met, in part, by the development by the Agency (or a party selected by the Agency) of not

fewer than 57 rental units affordable to persons of very low income and 41 rental units affordable to persons of either low or very low-income on a site owned by the City.

WHEREAS, the Agency intends to construct a 98-unit affordable housing project for seniors, in which at least 57 rental units will be available to persons of very low income and 41 units will be available to persons of either low or very low-income.

WHEREAS, this MOU sets forth the Parties' agreement with respect to Participant's affordable housing obligations with respect to the Project, sets forth the agreement of the City to make certain City property described below available for construction of rental affordable housing at no cost, or at a cost sufficiently low to permit development of the affordable housing project contemplated by the Agency, sets forth the agreement of the Agency to make certain funds available for rental housing in Agency's affordable housing project, and further sets forth additional conditions for the development of a housing project on the Property and the rights and duties of the Parties respectively.

WHEREAS, Participant and the Agency intend to enter into an Disposition and Development Agreement ("DDA") at a later date that will incorporate the terms of this MOU, set forth additional conditions for the development of the Project, and shall be recorded against the Property concurrently with Participant's acquisition of the Property.

WHEREAS, the County, the City and Agency intend to enter into an agreement at a later date that will incorporate the terms of this MOU.

WHEREAS, in the event of conflict between the terms of the DDA and the terms of this MOU, this MOU shall control on the point of conflict.

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties understand and agree as follows:

1. Affordable Housing on Parcel C.

(a) *Participant's Obligation to Sell 85 Moderate-Income Units.* Subject to Participant's acquisition of the Property, Participant shall make available for sale 85 of the units constructed by Participant on Parcel C to Moderate Income households as deed restrictions or other enforceable covenants running with the land (each of which shall constitute an "Affordable Home"). "Moderate income households" are defined as families earning a maximum of 120% of the Santa Clara County median income levels, as determined, updated, and published each year by the California Department of Housing and Community Development, based on Santa Clara County median income levels, adjusted for household size.

(i) The maximum sales price of an Affordable Home shall be determined as illustrated in Exhibit B hereto with the assumption that there will be 1.5 occupants per bedroom with no less than one more occupant than bedroom count (i.e. 2 persons for a 1 bedroom unit) and with the understanding that the interest rate for the purpose of determining the

amount of a mortgage to support a promissory note for the purchase of an Affordable Home (and establishing the maximum sales prices in Exhibit B) shall be the interest rate in effect at the time the City calculates Exhibit B on an annual basis. The City shall use the average 30 year fixed rate mortgage defined by Freddie Mac as published in Freddie Mac's weekly primary mortgage market survey as the interest rate.

(A) The "Minimum Sales Prices" for an Affordable Home shall be the lesser of (1) the price at which similarly sized market rate units within the Project are sold or (2) the amounts as follows:

1 bedroom units	\$290,000
2 bedroom units	\$330,000
3 bedroom units	\$370,000
4 bedroom units	\$400,000

In the event that the market price (which shall be determined with reference to the price at which similarly sized market-rate units within the Project are sold) of the unit is less than the Minimum Sales Price, the Agency shall have no obligation to increase the amount of the silent-second contribution as otherwise required by subsection b below.

(ii) The Agency will provide assistance to Participant to qualify purchasers for the purchase of the Affordable Homes. Certification and recertification of household size and income shall be administered by either the Agency, or by the Housing Authority of Santa Clara County, or some other entity as designated by the Agency pursuant to an agreement with the Agency.

(iii) Participant agrees to use its best efforts to market the Affordable Homes to the same extent and in the manner as those being developed on the Property that are not designated as Affordable Homes.

(iv) Participant shall be required to submit to the Agency a Disbursement Plan that indicates the location of the Affordable Homes within the development. The Disbursement Plan is subject to the approval of the Executive Director of the Agency, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed. However, the parties agree that the affordable homes will be distributed throughout the development as conceptually shown on the Site Map and Preliminary Distribution Plan in Exhibit C attached hereto and incorporated herein by this reference.

(v) The Agency and Participant hereby declare their understanding and intent that the burdens of the covenants set forth herein touch and concern the land in that the Participant's interest in the Property is rendered less valuable thereby. The Agency and Participant hereby further declare their understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by persons to whom the Affordable Homes will be affordable, the future owners of each Affordable Home ("Owner(s)").

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(vi) If Participant assigns its rights to purchase the Property, or sells the Property to a third party developer, then the provisions of this MOU and DDA will be binding on Participant's successor and Participant will require any assignee/developer-purchaser to agree in writing to assume and to comply with this MOU and the DDA.

(vii) The conveyance of each Affordable Home shall be subject to the Resale Restriction and Option to Purchase Agreement ("Resale Agreement") substantially in the form set forth in Exhibit D with such modifications thereto as may be agreed upon by Participant, Agency and the County. The Resale Agreement shall be recorded against each Affordable Home sold by Participant to an Owner upon the initial close of escrow for the sale of such Affordable Home. Following recordation of the Resale Agreement as required hereunder, the Agency or the County shall have the right to enforce the Resale Agreement and, upon default under any of the terms of the Resale Agreement, the Agency or the County may take any one or more of the following steps, in addition to all other remedies provided by the law or in equity:

(A) Enforce the obligations under the Resale Agreement by mandamus or other suit, action, or proceeding at law or in equity; including injunctive relief, require the Owner, or any successor in interest, to perform its obligations and covenants under this Agreement or under the Resale Agreement; or, enjoin any act or thing that may be unlawful or in violation of the provision of this Agreement, the DDA, or the Resale Agreement;

(B) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations under this MOU, the DDA, and the Resale Agreement against the Owner.

(b) *Agency Provided Silent Second Mortgages.* In exchange for the affordability restrictions on the eighty-five (85) Affordable Homes, Agency shall upon issuance of an Approval of Final Inspection by the City deposit Fifty Thousand Dollars (\$50,000) for each Moderate-Income Affordable Home into the Agency's silent-second mortgage program whereby the moneys deposited shall be used to provide silent second mortgages to purchasers of the Moderate-Income Affordable Homes. Notwithstanding the foregoing, Agency shall not be required to provide silent seconds to purchasers of studio homes. The silent second mortgages will be effected at the time of the initial sale of each Moderate-Income Affordable Home and the sum of Fifty Thousand Dollars (\$50,000) shall be delivered to escrow by the Agency on behalf of the homebuyer for the benefit of the Owner as a portion of the purchase price for each Moderate-Income Affordable Home. The Agency's silent second mortgage shall be secured by a Promissory Note and a Subordinate Deed of Trust ("Loan Documents") in the form attached hereto as Exhibit E and Exhibit F, respectively. The Deed of Trust shall be recorded concurrently with the Grant Deed. Notwithstanding the foregoing, in the event that Participant is unable to entice a qualified buyer to purchase any particular Moderate-Income Affordable Home on Parcel C at a sales price that is equal to or more than the Minimum Sales Prices, the Agency and Participant shall equally increase the amount of the Agency-provided silent-second mortgages by an amount necessary to entice a qualified buyer to purchase the unit. Participant may choose to contribute its 50% equal share by reducing the sales price of the unit an amount equal to the Agency's silent-second mortgage increase.

2. Affordable Housing on Parcel D

(a) *Participant's Obligation to Make 25 Units Available to Moderate-Income Households.* Participant will make 25 of the housing units constructed on Parcel D available to Moderate Income households ("the Parcel D Units") as specified in deed restrictions or other enforceable covenants running with the land (each of which shall constitute an "Affordable Home"); 10 of these units shall be detached units, and the remainder may be either detached or townhome units, at the Participant's option. Notwithstanding the preceding sentence, Participant shall have no obligation to sell the Parcel D Units to Moderate Income households at prices that are less than the price for identically sized market-rate units on Parcel D. Participant shall cooperate with the City in ensuring that appropriate deed restrictions or other enforceable covenants running with the land are recorded that ensure the 25 units remain affordable upon resale by the initial buyer.

(i) Participant shall submit to Agency a Disbursement Plan that indicates the location of the Affordable Homes within the development. The Disbursement Plan is subject to the approval of the Executive Director of the Agency, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed. However, the Parties agree that the Affordable Homes will be distributed throughout the development as conceptually shown on the Site Map and Preliminary Distribution Plan in Exhibit C attached hereto and incorporated herein by this reference.

(b) *Agency-Provided Silent-Second Mortgages or Subsidies.* Agency shall provide purchasers of the Parcel D Units with direct subsidies, silent-second mortgages, or both necessary to make the units affordable to Moderate Income households. If Agency elects to provide silent second mortgages, the silent second mortgages will be effected at the time of the sale of each Parcel D Unit and monies shall be delivered to escrow by the Agency on behalf of the homebuyer for the benefit of the Owner as a portion of the purchase price for each Parcel D Unit. The Agency's silent second mortgage shall be secured by a Promissory Note and a Subordinate Deed of Trust ("Loan Documents") in the form attached hereto as Exhibit E and Exhibit F, respectively. The Deed of Trust shall be recorded concurrently with the Grant Deed. Similarly, if Agency provides direct subsidies to the purchasers of the Parcel D Units, Agency shall deliver such monies into escrow on behalf of the homebuyer for the benefit of the Owner as a portion of the purchase price for each Parcel D Unit. As a condition of receipt of such subsidies, the purchaser of the Parcel D Unit shall execute a Resale Restriction and Option to Purchase Agreement ("Resale Agreement") substantially in the form set forth in Exhibit D with such modifications thereto as may be agreed between Agency, County and Participant. The Resale Agreement may be enforced by the Agency or by the County.

3. Affordable Housing at Main Street Site.

(a) *Agency Construction of 98-Unit Affordable Housing Project.* No later than the date which is six months after the fifth (5th) anniversary of the close of escrow for Agency's or Participant's acquisition of the Property whichever is earlier (the "Main Street Completion Date") Agency, by itself or in conjunction with a non-profit housing developer, shall complete construction of a 98-unit rental affordable housing project for seniors ("the Main Street Project"). The City shall provide the land for the Main Street Project at a cost that is sufficiently

low to permit the construction of the units to be financed by traditional affordable housing sources, and the rents on 57 of the units will be affordable to Very Low income households. The remaining 41 units shall be available for rental to Low and Very Low income households, the allocation of which shall be determined by Agency.

(i) The affordability of the project shall be assured by the recordation of a Regulatory Agreement restricting occupants to households of the above-described income levels, at affordable rents, for a period of not less than fifty-five years. If the Main Street Project construction is not complete on or before the Main Street Completion Date, the Agency shall pay to the County the sum of Five Million Dollars (\$5,000,000) which sum (the "Affordable Housing Compensation") the County shall use for land acquisition for, and/or the development, rehabilitation, operation and enhancement of, affordable housing in the County of Santa Clara. The County would not enter into this MOU and agree to delete the affordable rental housing from the Property except in return for the Agency agreement to cause the Main Street Project to be built within the time period specified above, or in the alternative, to deliver to the County the Affordable Housing Compensation for the County to use in the County's affordable housing programs.

(ii) Notwithstanding any contrary provision contained in this MOU, Agency's failure to complete construction of the Main Street Project by the Main Street Completion Date shall not be a default hereunder and shall not trigger Agency's obligation to pay the Affordable Housing Compensation to County where delay is caused by Force Majeure (as defined below). In such event, the Main Street Completion Date shall be extended for the period of time that Force Majeure causes the delay. "Force Majeure" means any strike, lockout, war, labor dispute, insurrection, riot, inability to obtain services, labor or materials or reasonable substitutes for those items, governmental restrictions imposed after the date hereof (other than restrictions imposed on Main Street Project solely by the City and/or the Agency), explosion, fire, flood, earthquake or other act of God, natural disaster or unavoidable casualty, delay due to enforcement of environmental regulations, litigation, or other cause beyond the reasonable control of the Agency. "Force Majeure" shall not include any delay caused by failure to obtain financing or by delay in obtaining approvals from Agency or City. Agency shall provide written notice to County upon the occurrence of any event constituting Force Majeure.

(b) *Participant's Contribution for Affordable Housing at Main Street Site.* Participant shall make a Five Million Dollar (\$5,000,000) contribution to Agency's affordable housing fund for use in the Main Street Project ("the Contribution"). Agency shall use the Contribution to provide the financial assistance to the Main Street Project. Participant shall disburse the Contribution as follows:

(i) Seven-Hundred-Fifty Thousand Dollars (\$750,000) upon issuance of the first building permit for the Project within Parcel C (excepting any permits issued for models and sales offices).

(ii) Four-Hundred-Twenty-Five Thousand Dollars (\$425,000) upon the close of escrow for each unit within Parcel C that results in an increment of ten percent of the total units within Parcel C being sold. For example, if there are 100 total units within Parcel C, a

payment of \$425,000 will be required upon the close of escrow of the 10th, 20th, 30th, 40th, 50th, 60th, 70th, 80th, 90th, and 100th unit within Parcel C.

(c) *County Affordable Housing Contribution.* Pursuant to the County-Agency Agreement, the Agency agreed to provide a subsidy of One Million Dollars (\$1,000,000) from the Infrastructure Account in connection with the development of affordable housing on a portion of the Property. The County-Participant Agreement also references the Agency's One Million Dollar (\$1,000,000) contribution to affordable housing on the Property. The Parties agree that the One Million Dollars (\$1,000,000) contribution to affordable housing described in the County-Agency Agreement and in the County-Participant Agreement shall be made by the Agency to the Main Street Project and not to the Property. If the Main Street Project is not constructed by the Main Street Completion Date, the Agency may use the One Million Dollar (\$1,000,000) contribution for the purposes of assisting with the development of low and very low-income affordable housing within the City of Milpitas for two years following the Main Street Completion Date. If the One Million Dollar (\$1,000,000) contribution is not spent within two years of the Main Street Completion Date, the funds shall be disbursed to the County.

(d) *Other Development Not a Condition.* The obligations of the City and of the Agency to construct the Main Street Project are unconditional and are not dependent upon any County development on or near the Main Street Project (including any proposed health facility that may, or may not, be constructed by the County).

4. **Park Land Dedication Payment.** In the event that the total "park land dedication" provided by Participant and County (up to 7 acres pursuant to Section 2[c] of the Exclusive Negotiating Rights Agreement) for the estimated 720 unit project (including the Hetch Hetchy right of way land) is not adequate to fully satisfy the city parkland requirements for the project, then any additional park in lieu fees required shall be paid by the Agency from funds other than funds deposited into the Infrastructure Account.

5. **Miscellaneous Provisions.**

(a) *Counterparts.* This MOU may be executed in counterparts, all of which together shall constitute a single original agreement, so executed this MOU shall constitute an agreement which shall be binding upon all parties to the MOU, notwithstanding that the signatures of all parties do not appear on the same page.

(b) *Agreement to Run with Land.* This MOU, the DDA and the Resale Agreement shall run with the Property and be binding to the Parties hereto and their successors and assigns, subject to acquisition of the Property by the Agency and Participant.

(c) *Defaults.* Either Party shall be deemed in default of this MOU when failing to substantially comply with any material term of this MOU. Failure to cure a default within thirty (30) days after written notice provided to the defaulting party by the non-defaulting party, or if such default cannot reasonably be cured within said thirty (30) day period, failing to commence such cure within said thirty (30) day period and thereafter diligently prosecuting such cure, shall result in immediate termination of this MOU and any development rights granted by the City as a result thereof.

(d) *Severability*. If any term or provision of this MOU shall be held invalid or unenforceable, the remainder shall not be affected.

(e) *No Waiver*. No waiver or breach of any covenant or provision shall be deemed a waiver of any other covenant or provision and no waiver shall be valid unless in writing and executed by the waiving party.

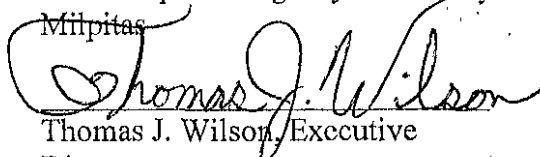
(f) *Amendments*. This MOU may not be amended or altered except by a written instrument executed by Agency, City, KB Home South Bay Inc. and the County.

[EXECUTION PAGE FOLLOWS]

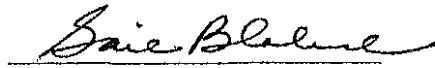
IN WITNESS WHEREOF, Agency has by order of the Agency Board of Directors caused this Memorandum of Understanding to be subscribed by the Executive Director of the Agency by Resolution No. RA 220 and attested by the City Clerk thereof, the City has by order of the City Council caused the same to be subscribed by City Manager of the City by Resolution No. 7401 and attested by the City Clerk thereof, and KB Home South Bay Inc. and the County have executed the same this 18th day of May, 2004.

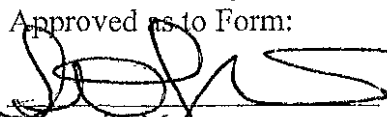
"AGENCY"

Redevelopment Agency of the City of
Milpitas

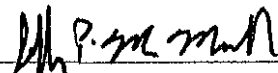

Thomas J. Wilson, Executive
Director

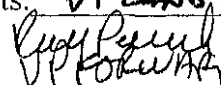
Attest:


Gail Blalock, City Clerk
Approved as to Form:



Steven T. Matias
Agency Counsel

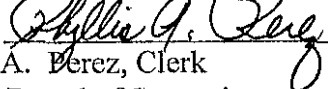
KB Home South Bay Inc.

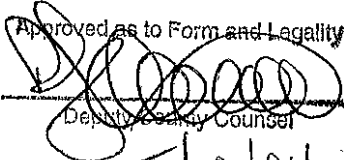
By: 

Its: VP Land, Acq.

VP FORUMS PLANNING
COUNTY:

The County of Santa Clara, a political
subdivision of the State of California

By: 
PETE McHUGH, CHAIR
Board of Supervisors

Attest: 
Phyllis A. Perez, Clerk
Board of Supervisors

Approved as to Form and Legality

Deputy County Counsel
Date 5/18/04